



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

July 31, 1998
AO-98-18

Robert E. Cowden, III, Esq.
Casner & Edwards, LLP
One Federal Street
Boston, MA 02110

Re: Non-profit corporation providing contributions to support PAC

Dear Mr. Cowden:

This letter is in response to your June 5, 1998 request for an advisory opinion.

1. Facts

The facts relevant to your questions, as stated in your letter, are as follows: "Organization is a Massachusetts nonprofit corporation organized under Massachusetts General Laws, Chapter 180. Voting members of the Organization are predominantly nonprofit corporations, but a few voting members are business corporations. The Organization also has associate (non-voting) members. Some associate members are business or professional corporations or partnerships, and some are individuals. All members pay dues. Dues constitute only one source of support for the Organization. Other sources consist of investment income and net income from revenue-generating activities. The Organization employs on its staff an individual who is registered under G.L. c. 3, § 40 as an executive agent and a legislative agent of the Organization. The Organization provides administrative support for a political action committee."

2. Discussion

You have asked a number of questions, each of which will be answered separately.

(a) May the Organization incur unreimbursed expenses for administrative support of a political action committee?

No. Section 8 of the campaign finance law, M.G.L. c. 55, states in relevant part as follows:

[N]o business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly **or indirectly** give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination

or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party. (Emphasis added).

A non-profit corporation which is funded by member business or professional¹ corporations may not make “contributions” (whether monetary or in-kind) or “expenditures” to PACs, candidates or party committees. See AO-91-31, in which the office stated that “M.G.L. c. 55, s. 8 generally prohibits a non-profit corporation which receives funds from a business corporation from making political contributions . . .” See also Op. Atty. Gen., November 6, 1980 which noted that “If a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not do so indirectly through the associations to which it belongs.” The use of such funds to provide administrative support for a political action committee (PAC) would be inconsistent with the campaign finance law unless the PAC reimburses the Organization for the full value of services provided. See AO-98-03 and AO-97-21.

(b) Is your answer to (a) affected if the Organization provides this support with funds other than dues received from business or professional corporations or partnerships?

No. As noted above, the prohibition on business/professional corporation contributions to PACs applies to *indirect* as well as direct contributions. Segregation of business and professional corporation funds would allow business and professional corporations to make prohibited indirect contributions because it would enable other organization funds to become available to support PACs, candidates or parties.²

(c) May the Organization reimburse its employee who is a registered executive and legislative agent for contributions that that individual makes to candidate committees?

No. Such reimbursement would result in the Organization’s making a contribution of prohibited funds.

(d) Is your answer to (c) affected if the Organization provides this reimbursement with funds other than dues received from business or professional corporations or partnerships?

No. See discussion in response to question (b).

(e) If reimbursements described in (c) may properly be made, will the contributions by the individual to candidates’ committees be considered contributions of the individual, contributions of the Organization or contributions of both?

¹ The prohibition applies to business or professional corporations (PCs). See AO-95-24, citing M.G.L. c. 156A, §4(a) which states that PCs are subject to all of the restrictions applicable to business corporations except where inconsistent with M.G.L. c. 156A.

² In AO-91-31 the office indicated that a non-profit corporation’s segregation of funds received from a business corporation may be sufficient to permit the non-profit corporation to make incidental political contributions. To the

The reimbursement described in (c) may not properly be made.

(f) May the individual described in (c) deliver to a candidate committee contributions from the political action committee that receives administrative support from the Organization if the individual is requested to do so by the political action committee?

Yes. If the individual, on his or her own time, delivers the PAC contribution, the service would not involve the making of a contribution by the Organization. Rather it would be a "personal service." See M.G.L. c. 55, § 1, which excludes, from the definition of "contribution," "the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others . . ." In addition, the individual may deliver the PAC contribution to the extent the Organization allows employees to perform non-work related activities during business hours. See Op. Att'y General, November 6, 1980. The individual may not, however, deliver the contribution if he or she is paid by the Organization and the services described in your question are provided during the individual's workday.

(g) Would contributions described in (f) be considered contributions of the individual, contributions of the political action committee or contributions of both?

The contribution would be considered a contribution of the PAC only. As an agent of the PAC acting on the PAC's behalf, the individual would be considered an "intermediary" subject to section 10A. See 970 CMR 1.07(3)(c) which specifies that contributions from a PAC which are delivered by an officer or agent of the PAC are not made "through an intermediary or conduit."

PACs and their agents should be aware of the "bundling" provisions of the campaign finance law, M.G.L. c. 55, § 10A, which address the delivery of more than one contribution to a candidate . . . "through an intermediary or conduit." A legislative or executive agent or agent of a PAC is a "regulated intermediary" and as such is subject to the limitations defined in section 10A and 970 CMR 1.07. A copy of the relevant regulations is attached.

I have enclosed a *Campaign Finance Guide for Political Action Committees and People's Committees* and other information summarizing the reporting obligations and other responsibilities of PACs registered with this office.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Sullivan", followed by a horizontal line.

Michael J. Sullivan